**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR**

**TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929**

**OP.No. 7498 of 2001(S)**
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**OA.72/2001 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH**
**.....**

**PETITIONER:**
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**SREEJITH S.,**
**SUPERINTENDENT OF POLICE,**
**KASARAGODE, PERMANENT ADDRESS AT**
**5/749, SREERAGAM, RARICHAN ROAD,**
**ERNAJIPALAM, CALICUT – 672 006.**

**BY ADV. SRI.M.POLY MATHAI**
**SRI.ISAC T. PAUL**

**RESPONDENTS:**
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1. **STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY,THIRUVANANTHAPURAM.**

2. **SECRETARY, GENERAL ADMINISTRATION DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

3. **DIRECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM.**

4. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW DELHI.**

5. **DEPARTMENT OF PERSONNEL AND TRAINING, NEW DELHI.**

**BY GOVERNMENT PLEADER SRI. R.LAKSHMI NARAYANAN for R1toR3**
**BY ADV. SRI. P. PARAMESWARAN NAIR, ASST.S.G for R4 & R5**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

*KSS*

**ORDER ON C.M.P.NO.12298/2001 IN O.P.NO.7498/2001 S**

**DISMISSED**

**23/10/2007** **SD/-K.BALAKRISHNAN NAIR, JUDGE**

**SD/-T.R.RAMACHANDRAN NAIR,JUDGE**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1:** **COPY OF THE ORDER OF THE PROCEEDINGS OF THE COMMISSIONER FOR GOVERNMENT EXAMINATIONS, THIRUVANANTHAPURAM DTD. 22/12/1998.**

**EXT.P2:** **COPY OF FORWARDED DTD. 17/01/2000 BY THE 3RD RESPONDENT TO THE PETITIONER.**

**EXT.P3:** **COPY OF JUDGMENT IN O.A.NO.72/2001 DTD. 19/01/2001 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.**

**/TRUE COPY/**

**P.A.TO JUDGE**

*KSS*

**K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.**

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Original Petition No.7498 of 2001-S

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Judgment

Balakrishnan Nair, J.

The petitioner is a member of the Indian Police Service. His date of birth as per the entry in the SSLC book was 14.05.1968. He found that the said date of birth was not correct. According to him, the correct date of birth is 14.09.1968. Therefore, he moved an application before the Commissioner for Government Examinations on 31.08.1996 to correct the date of birth in his SSLC book as 14.09.1968. The said application was allowed by the Commissioner by Ext.P1 order dated 22.12.1998 and the date of birth in the SSLC book was corrected as 14.09.1968. Armed with Ext.P1 order, the petitioner moved for correction of the date of birth in his service records. The same was rejected by the Government by Ext.P2 communication dated 01.01.2000. The petitioner challenged that order before the CAT by filing OA No.72/01. The said OA was dismissed by Ext.P3 order dated 19.01.2001. Feeling aggrieved by Exts.P2 and P3, this Writ Petition is filed, seeking appropriate reliefs. The petitioner submits, the relevant rules permit correction

of bona fide clerical mistakes in the entry regarding date of birth. He submits, his case will come under the said Rule and therefore, the rejection of his application by the Government by Ext.P2 and its affirmation by the CAT by Ext.P3 are unsustainable in law.

2. The relevant rule has been extracted in the Judgment of the CAT which is Rule 16A of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. For convenient reference, we also extract the said Rule 16A below.

> *"Acceptance of date of birth - (1) For the purpose of determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted by the Central Government under this Rule.*
>
> *(2) In relation of a person appointed after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971.*
>
> *(a) the Indian Administrative Service under Clause (a) or Clause (as) of sub-rule (1) of Rule 4 of the Indian Administrative Service*

*(Recruitment) Rules, 1954 : or*

*(b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) of Rule 4 of the Indian Police Service (Recruitment) Rules, 1954; or*

*(c) the Indian Forest Service under clause (a) or clause (aa) of sub-rule (2) of Rules of the Indian Forest Service (Recruitment) Rules, 1966;*

*the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.*

*(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned Government shall be accepted by the Central Government, as the date of birth of such person.*

*(4) The date of birth as accepted by the Central Government shall not be subject to any alteration except where it is established that a bona fide clerical mistake has been committed*

*in accepting the date of birth under sub-rule (2) or (3).”*

Going by Sub-rule (2), the date of birth declared by the candidate in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of the said candidate. The petitioner points out that the conditions attached to the application form specifically provide that the date of birth in the SSLC book should alone be the date of birth that can be shown in the application form. Once the date of birth is accepted by the Government, going by Sub-rule (4) of Rule 16A quoted above, the correction is permissible only of a bona fide clerical mistake in accepting the date of birth. Going by the above Rule, we feel that Sub-rule (4) applies when the mistake is committed by the Government in accepting the date of birth furnished by the incumbent. For example, if the petitioner claims that his date of birth is 14.05.1968 and when the Government accept and enter the same in his service records, if it is shown as 14.05.1967, it will be a bona fide clerical mistake in accepting the date of birth. According to the learned counsel for the petitioner, his case is also covered by the said clause. We feel that the said contention is plainly untenable. The petitioner's case is a usual general case of correction of date of birth. In his SSLC book, a particular date of birth is shown

based on which he secured admissions to various courses and after entering into service, he moves the Commissioner for Government Examinations and gets the date of birth corrected. Thereafter he moves the competent authority for corresponding correction in his service records. Such a correction is never contemplated within the purview of Sub-rule (4) of Rule 16A. Therefore, we are of the view that the CAT has rightly dismissed the OA. We find no reason to interfere with the same. Accordingly, the OP fails and it is dismissed.

**K.BALAKRISHNAN NAIR,JUDGE**

23.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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